NORTHERN IRELAND COMMITTEE IRISH CONGRESS OF TRADE UNIONS (NIC-ICTU)
SUBMISSION TO NIO CONSULTATION ON NEW LEGAL FRAMEWORK FOR ABORTION SERVICES IN NORTHERN IRELAND

1. INTRODUCTION

The Irish Congress of Trade Unions (ICTU) represents workers and their families on the island of Ireland. Uniquely in Europe ICTU spans two jurisdictions. It represents approximately 750,000 workers throughout Ireland, including over 200,000 workers in Northern Ireland.

Congress is the largest and most politically and culturally diverse civil society organisation on the island of Ireland. We have played an active role for many years in the pursuit of peace while also advocating on behalf of our members' families and their communities.

Congress policy on the issues raised in this consultation is based on a succession of conference motions passed at ICTU delegate conferences in both jurisdictions. Congress policy has also been informed by researching the issue and its impact on trade union members, most notably the extensive piece of research carried out in 2017 by Dr Fiona Bloomer and Chelsey Abernethy from Ulster University in conjunction with a number of our affiliates on *Abortion as a Workplace Issue*[1].

Congress also brings the expertise of its affiliate trade unions, in particular unions whose members will be affected by the repeal of Sections 58 and 59 of the Offences Against the Person Act and the decriminalisation of abortion in Northern Ireland. Not only will we consider the lived experiences of our female members (who comprise a slight majority of total trade union membership), but our members in particular Health unions who will be the direct providers of abortion services and support.

This consultation response, then, has sought and received the input of our affiliates who represent Nurses and Midwives, UNISON and the Royal College of Midwives, and we are grateful for the valuable insights of our colleagues in the Republic of Ireland based affiliate, the Irish Nurses & Midwives Organisation.

We should recognise that there are workers in several other unions whose working lives will be directly impacted, such as social workers, hospital consultants, NHS managers, Family Planning, GUM and 'Obs & Gynae' specialists and administrative staff.

We also acknowledge that our trade union equality campaigners and other advocacy groups have played an important role in shaping (and at times leading) the movement's policy development, in particular several Trades Councils and Alliance 4 Choice, and the crucial role being played by the Congress Women's Committee.

[1] https://www.ictu.ie/download/pdf/tu_abortion_report_oct9_final_final_edit.pdf

2. GENERAL COMMENTS

Congress welcomes the opportunity to respond to this consultation but considers that it is long overdue and wishes to put on record that it has been brought about by the tireless campaigning of a number of brave women who have spoken out about their experiences, often at great personal cost, as well as civil society and a selection of committed and fearless campaigners and political representatives.

Congress also acknowledges the role that the CEDAW Committee has played in holding the UK Government to account. Congress gave evidence to the CEDAW enquiry into abortion law reform in Northern Ireland in 2016 and welcomed the report which the Committee subsequently produced.

We would draw attention to **all of** the recommendations made by the Committee in their report following the Inquiry, in particular the recommendations which are not covered by the Government's consultation. We would draw the UK Government's attention to these recommendations which also require urgent attention in terms of implementation, including, inter alia:

> **Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;**
>
> **Ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral, emergency, long-term and permanent forms of contraception, and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;**
>
> **Provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area;**
>
> **Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation;**
>
> **Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;**
>
> **Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers;**

3. CONGRESS RESPONSES TO QUESTIONS IN THE CONSULTATION DOCUMENT

3.1. Gestational Limits

Congress agrees that abortion should be available, without restrictions, up to 24 weeks.

However, exceptions to this **must** exist in certain circumstances including in cases of severe or fatal foetal abnormality and in cases of risk of death or grave injury to health.

3.2. Gestational Limit - in cases of sexual crime.

Congress does not agree with limiting early terminations to 14 weeks. In reaching this conclusion, we have listened to evidence from practitioners such as the British Pregnancy Advisory Service and the Abortion Support Network who regularly deal with victims of sexual crime who have not been able to access an abortion in the first trimester. As noted in the consultation document, restricting abortion access only to victims of sexual crime would be impossible to regulate and the proposed limits are not long enough to meet the needs of victims of sexual crime. Providing unrestricted access to abortion in line with 24 weeks in the rest of the UK would ensure that no victim of sexual crime would be forced to travel to GB for a termination.

3.3. In cases of Severe or Fatal Foetal Abnormality

Third trimester abortions are extremely rare and most families receiving news about an abnormality decide whether or not to continue the pregnancy by 24 weeks. Congress understands that under the current system, foetal anomaly screening takes place at a 20-week scan which taking into account the time required for follow up appointments not to mention families coming to a difficult decision, would mean that a time limit of 21 weeks + 6 days would not meet the needs of families in these circumstances.

The CEDAW Committee recommends that abortion should be available where a diagnosis of abnormality is severe as well as fatal. In the circumstances where a family receive a late diagnosis of severe or fatal diagnosis, it is important that access is provided after 24 weeks.

Congress therefore agrees that abortion without time limit should be available in these circumstances.

3.4. In cases of risk to life or injury

Congress agrees that provision to abortion without time limits should be available where there is a risk to the life of the woman or girl or where termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman or girl.

3.5. Who can perform a termination?

Congress believes that abortion care should be treated like other forms of sexual and reproductive healthcare.

We agree that medical practitioners and other registered healthcare professionals should be able to provide terminations. Providers must be adequately trained, resourced and supported by their healthcare trust and union against any discrimination. Conscientious commitment to providing services should also be promoted and valued.

3.6. Where can procedures take place

We agree that there must be flexibility as to where abortion procedures can take place. Such considerations should take into account the needs of rural communities as well as long waiting times to see GPs.

The most important point is that services should not come with barriers. The NICE Guidelines recommend facilitating an assessment within one week of request and termination within one week of assessment. Early medical and surgical abortion can be managed in a primary care facility.

3.7. Termination post 22/24 weeks

We agree that terminations in these circumstances should be undertaken within acute hospitals.

3.8. Certification by Healthcare professionals

Congress believes that access to abortion should be regarded as a routine part of healthcare and is therefore not in favour of certification.

Requiring certification treats abortion services differently from other medical procedures and is potentially stigmatising. Women and pregnant people can come to their decision after a consultation with a healthcare professional and do not require permission to access the services which they require.

3.9. Notification requirements

Notification requirements should be in line with other similar medical treatments and support good governance and data collection. This should not place undue burdens on abortion providers.

3.10. Conscientious Objection.

We agree that the proposed Conscientious Objection provision should reflect practice in the rest of the UK. We agree that it should not apply to associated ancillary, administrative or managerial tasks.

We also believe that there should be a clear commitment to supporting those with a **conscientious commitment** to providing abortion care. This should include protection from discrimination and harassment from both colleagues, protestors and others.

3.11. Exclusion Zones

We agree that there should be provision which would allow for exclusion/safe zones. We are unclear as to the intention in Question 14 as the creation of an exclusion zone implies that protest outside of this would be permissible. We would therefore regard powers to designate separate zones for protest as unnecessary.

SECTION 75 – EQUALITY SCREENING

ICTU believes the screening exercise conducted for this new legislative framework is fundamentally flawed.

The decision to proceed with a full Equality Impact Assessment (EQIA) on the grounds of a *'minor'* impact on good relations in the categories of religious belief and political opinion and also a *'minor'* impact on equality of opportunity in the category of religious belief we believe is outwith the purpose and rationale for the use of an EQIA as set out in the NIO equality scheme and the Equality Commission guidance.

A core purpose of the statutory equality duty is to assess any 'adverse impact' on actual *discriminatory detriment* on a protected equality ground. It is not a measure as to whether a policy is contentious or a policy is not in conformity with the views of interest groups.

The threshold for triggering an EQIA is usually when 'major' impacts on equality of opportunity are identified. It is uncontested that this threshold is not met. The NIO Equality Scheme [4.9] does provide that "on occasion" minor impacts will lead to an EQIA. However, the reason provided for proceeding to an EQIA in the screening focuses on abortion being a 'sensitive issue' which is not a reason compliant with the equality scheme and duty for an EQIA.

The approach and conceptualisation to 'good relations' is erroneous and misconstrued, and the screening should not be finding 'adverse impacts' on good relations grounds. The Good Relations duty is not to be interpreted as a veto – i.e. that the duty is 'breached' if a policy is not in conformity with some political or religious beliefs. Such an approach would render all policies that were politically contested, even those promoting equality, as an 'adverse impact' on the Section 75 duties undermining their purpose.

The Equality Scheme commits to conducting an EQIA in accordance with Equality Commission guidance. The purpose of an EQIA relates to impacts on equality, it does not address alleged 'good relations' impacts. The concept of 'good relations' is not even referenced in the 86 pages of the Equality Commission EQIA guidance. There is therefore no purpose in proceeding to an EQIA for 'good relations' purposes.

In relation to impacts on Equality of Opportunity the Screening decision [p7] references a positive impact on women due to access to lawful abortion services; however no reference is made to this positive impact in the actual assessment, which should have had an impact on the screening decision.

The basis for a finding of an adverse impact on equality of opportunity on religious belief is unclear. Should this be influenced by some persons on grounds of religious belief opposing abortion, this is not itself a material adverse impact on equality of

opportunity. Should the finding be solely related to the question of 'conscientious objection' on such grounds, then the Screening decision should have been to 'screen out' the policy with mitigating measures, proposed mitigating measures are already set out in the screening document.

For the reasons set out above ICTU is requesting that the NIO to review its screening decisions. In doing so we are also concerned that other specific equality matters have not been dealt with sufficiently in the screening process. This includes the specific needs in relation to abortion services for Transgender people and people with a disability.

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